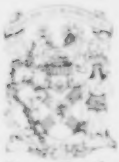
Nova Scotia

ANNUAL REPORT

for the period
April 1, 2004, to March 31, 2005

Public Prosecution Service



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Public Prosecution Service

Honourable Cecil Clarke
Speaker of the Nova Scotia House of Assembly
Office of the Speaker
Province House
Halifax, Nova Scotia B3J 2Y3

Dear Mr. Speaker:

I have the honour of presenting to you and through you to the Members of the Legislative Assembly, the Annual Report of the Public Prosecution Service of Nova Scotia, as required by Section 13 of the *Public Prosecutions Act*. This report covers the period of April 1, 2004, to March 31, 2005.

Martin E. Herschorn, Q.C.
Director of Public Prosecutions

2007-04022/

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THE MANDATE OF THE PUBLIC PROSECUTION SERVICE

In Nova Scotia all prosecutions for criminal and provincial offences are brought in the name of the Crown because the Crown is responsible for bringing before the courts those accused of prohibited conduct that adversely affects the safety and well-being of the community.

The mandate of this prosecution service is to ensure fair and equal treatment in the prosecution of offences.

All prosecutions within the jurisdiction of the Attorney General of Nova Scotia are the responsibility of the Director of Public Prosecutions and are conducted by the Crown attorneys of the Public Prosecution Service, independently of the Attorney General. The only limitation on the operational independence of the Director of Public Prosecutions arises when the Attorney General issues written instructions to the Director of Public Prosecutions. These instructions are binding and must be made public. This procedure preserves the ultimate prosecutorial authority of the Attorney General. It is a means of ensuring accountability to the electorate for the manner in which public prosecutions are conducted.

In support of its mandate, the Public Prosecution Service has adopted the following mission and goals.

MISSION

The mission of the Public Prosecution Service of Nova Scotia is to seek justice and serve the public interest by performing prosecution duties with fairness, professionalism, and integrity.

GOALS

In accomplishing its mission, the Public Prosecution Service contributes to the government's priority of fulfilling its social responsibility of providing for public safety.

To accomplish its mission, the Public Prosecution Service has set the following goals:

1. To provide a Public Prosecution Service that reflects excellence, dedication to public service, and high ethical standards.

2. To provide a Public Prosecution Service that identifies and manages the resources required to carry out its mission.

3. To provide a Public Prosecution Service that reflects the application of best business practices consistent with providing a high quality service.

4. To provide within the Public Prosecution Service an environment that allows for the independent exercise of prosecutorial discretion.

5. To provide a Public Prosecution Service that is reflective of the community it serves.

CORE BUSINESS FUNCTIONS

- Represent the Crown in the conduct of criminal matters and quasi-criminal matters before all levels of court.
- Represent the Crown in the conduct of criminal and quasi-criminal appeals before all levels of courts.
- Provide legal advice and assistance to the police and provincial law enforcement officers at their request.
- Participate in the development of criminal law policy and criminal prosecutions policy.

PRIORITIES AND ACCOMPLISHMENTS FOR 2004–05 IN RELATION TO THE SERVICE'S BUSINESS FUNCTIONS:

The priorities for the first three core business areas of the service overlap significantly and thus are presented as a group:

- Represent the Crown in the conduct of criminal and quasi-criminal matters before all levels of courts.
- Represent the Crown in the conduct of criminal appeals and quasi-criminal appeals before all levels of courts.
- Provide legal advice and assistance to the police and provincial law enforcement officers at their request.

Court Activity

This year 82 Crown attorneys in 18 offices across the province prosecuted 41,711 criminal offences and 4,565 NS statute matters in both Provincial Court and the Supreme Court of Nova Scotia. (See Appendix A & B)

During 2004–2005, 47 appeals and 112 chambers motions were handled by the Public Prosecution Service in the Nova Scotia Court of Appeal. (See Appendix C)

Education and Training

Continuing education for full-time and per-diem Crown attorneys as well as support staff remained a priority in order to enhance the level of expertise within the Public Prosecution Service and the resulting quality of prosecution services. A significant expenditure was allocated to education and training during the fiscal year. Specifically, the Public Prosecution Service

- funded the attendance of fifty Crown attorneys at the Federation of Law Societies National Criminal Law Program in Halifax

- funded the Crown Attorney Annual Conference and the Public Prosecution Service Support Staff Annual Seminar held in Western Shore, Nova Scotia
- funded the participation of six Crown attorneys at the Ontario Crown Attorneys' summer school program, a valuable professional development opportunity made available to the Public Prosecution Service through the kind cooperation of the Ontario Ministry of the Attorney General
- funded a two-day program on cross-examination skills for 25 Crown attorneys
- largely completed training Crown attorneys in the province's Family Violence Initiative with the remaining Crown attorneys to receive training next year
- continued additional training as required on new Public Prosecution Service policies
- supported the requirements of the Education Development Committee to insure that Public Prosecution Service staff received required training

Youth Criminal Justice Act

The Public Prosecution Service participated in the development of a Nova Scotia proposal to the federal government to implement improvements in the legislation.

Information Technology

Staff training was completed on the Prosecution Information Composite System (PICS)—a comprehensive computerized offender history information system. PICS eliminates the deficiencies of manual information management and greatly aids in the delivery of efficient and effective prosecutorial services.

Meanwhile, work continued on the development of a parallel information system to provide management with statistical information to better assess workload and distribution of workload.

The development of a case management system within the Public Prosecution Service continues to make progress as does identification and refinement of service delivery "best practices."

Communications

The Public Prosecution Service also continued implementation of its communications strategy.

The Public Prosecution Service continued its comprehensive program of media training Crown attorneys. Crown attorneys have daily contact with the media and follow Public Prosecution Service policy to use the media as a conduit to the public to ensure that prosecutorial procedure and decisions are explained.

The newsletter *On the Docket* continued publication and distribution.

Once again, the Public Prosecution Service had a successful meeting with representatives of Mothers Against Drunk Driving (MADD) to share perspective about the issue of impaired driving.

Results of the Employee Wellness and Recognition Survey were provided to management and a Public Prosecution Service employee recognition and wellness program is in development.

Pre-Charge Advice

An important element of the Crown attorney's ongoing responsibilities is to provide pre-charge advice to police and provincial law enforcement officers upon their request. The Public Prosecution Service continues to allocate sufficient resources to the delivery of quality pre-charge legal opinion. Further, a service-wide system to capture the extent and frequency of advice is in development.

- **Participate in the development of the criminal law and criminal prosecutions policy.**

Progress was made in the Public Prosecution Service strategic planning process. Development will continue.

The Public Prosecution Service continued contribution to the development of criminal law policies and procedures through participation in meetings with federal/provincial/territorial ministers and deputy ministers responsible for Justice; CCSO (Coordinating Committee of Senior Justice Officials) and federal/provincial/territorial heads of prosecutions; and provincial deputy ministers.

A Public Prosecution Service Crown attorney attended the Uniform Law Conference of Canada as Nova Scotia's representative to provide input on criminal law revisions/amendments.

The Public Prosecution Service also participated in provincial government policy initiatives, the standardization of documents used in courts, restorative justice, and training with regard to the domestic violence.

THE ROLE OF THE ATTORNEY GENERAL

In Nova Scotia, the Minister of Justice is also the Attorney General and superintends all matters connected with the administration of justice in the province except those within the jurisdiction of the Attorney General of Canada. The Attorney General's functions and powers include legislative responsibility for affairs and matters relating to courts and prosecutions. He or she is the Law Officer of the Crown and the Chief Public Prosecutor.

By virtue of this role, the Attorney General has the right to be informed about the conduct of police activities and individual criminal prosecutions. This right is normally only exercised in exceptional cases. No such right exists for any other member of the executive council or of government. This not only protects the integrity of the criminal justice system, but serves to shield government members and their staff from the accusation of attempting to interfere in the administration of justice.

The Public Prosecutions Act ensures the accountability to the Legislative Assembly of the Attorney General in his or her capacity as Chief Public Prosecutor. Section 6 of the act provides that the Attorney General is responsible for the Public Prosecution Service and is accountable to the Assembly for all prosecutions. This ensures that ultimate control over prosecutions remains in the hands of an elected official.

By virtue of subsection 6 (a) of the Public Prosecutions Act, the Attorney General is entitled to issue general instructions or guidelines in respect of all prosecutions, or a class of prosecutions, to the Public Prosecution Service after consultations with the Director of Public Prosecutions. During the period April 1, 2004, to March 31, 2005, the Attorney General did not have occasion to exercise his authority with this provision.

By virtue of subsection 6 (b) of the Public Prosecutions Act, the Attorney General is entitled to issue instructions or guidelines in a particular prosecution after consultation with the Director of Public Prosecutions. During the period April 1, 2004, to March 31, 2005, the Attorney General did not have occasion to exercise his authority with this provision.

By virtue of subsection 6 (e) of the Public Prosecutions Act, the Attorney General is entitled to exercise all statutory functions with respect to prosecutions after consultation with the Director of Public Prosecutions. During the period April 1, 2004, to March 31, 2005, the Attorney General did not have occasion to exercise his authority under this provision.

THE ROLE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

The Director of Public Prosecutions is the head of the Public Prosecution Service, which conducts all prosecutions independently of the Attorney General on behalf of the Crown in right of Nova Scotia. This includes the prosecution of offences under the Criminal Code, certain other federal statutes (e.g., Migratory Birds Convention Act, Canada Shipping Act, Small Vessel Regulations, and Explosives Act), and most offences under provincial statutes. Prosecutions for violations of other federal statutes are conducted by agents of the Attorney General of Canada.

The Director of Public Prosecutions, as the lawful Deputy of the Attorney General with respect to prosecutions under the Criminal Code and under the Summary Proceedings Act, can exercise any of the powers conferred upon the Attorney General. These include the preferring of direct indictments or consenting to the laying of a new information following a discharge of an accused at a preliminary inquiry. When these powers are exercised in indictable matters, a report can be provided to the Attorney General at his or her request or upon the initiative of the Director of Public Prosecutions. This would allow the Attorney General to be in a knowledgeable position should any of these decisions be questioned in the House of Assembly or should the Attorney General wish to exercise any of the powers conferred by section 6 of the Public Prosecutions Act.

The Director of Public Prosecutions also has the status of deputy head, and the provisions of the Civil Service Act and regulations relating to a deputy or a deputy head apply to the Director of Public Prosecutions.

The Director of Public Prosecutions must be a barrister of at least 10 years' standing. If from another province, he or she must become a practising member of the Nova Scotia Barristers' Society within one year of appointment. The Director of Public Prosecutions holds office during good behaviour and may be removed from office for cause by a resolution of the Assembly.

THE ROLE OF THE CROWN ATTORNEY

Crown attorneys in Nova Scotia are responsible to the Director of Public Prosecutions for the conduct of prosecutions through a Chief Crown Attorney. The conduct of a prosecution involves not only the conduct of the trial itself but a myriad of other activities essential to a fair prosecution. Crown attorneys therefore conduct arraignments, show cause (bail) hearings, preliminary inquiries, sentencings, appeals to the Supreme Court of Nova Scotia, appeals to the Court of Appeal, appeals to the Supreme Court of Canada, disposition and review hearings before the Criminal Code Review Board, and fatality inquiries. In addition, they provide pre-charge advice to the police and provincial government enforcement officials, participate in the formulation of policy advice on the criminal law, participate in management activities aimed at improving the delivery of prosecutorial services to our community, prepare professional papers, and conduct and participate in public speaking engagements. In short, they discharge a number of responsibilities of fundamental importance to our community.

In discharging these responsibilities a Crown attorney must be guided by the law, codes of professional ethics, and the public interest. The public interest involves many considerations. It encompasses the need to protect citizens on convicting criminals and deterring crime. The community is entitled to have those charged with offences prosecuted firmly and efficiently, but it also expects them to be prosecuted fairly. Properly balanced, the public interest in the conviction of the guilty does not conflict with the principles of fundamental justice.

The notion that all accused should receive fair and equal prosecutorial treatment by the Crown is an aspect of the rule of law. Canada's judicial system operates on an adversarial trial model. It is left up to the parties to frame the issues before the court and lead the evidence relied on in support of their case. The role of defence counsel in this model is to do everything that can be ethically done to secure an acquittal for an accused who has chosen to plead not guilty. The role of Crown attorney, on the other hand, excludes any notion of winning or losing. The Supreme Court of Canada has expressed the proper frame of mind of those who represent the Crown in the following words:

"... the situation which the Crown occupies is not that of an advocate in a civil case. His functions are quasi-judicial. He should not seek so much to obtain a verdict of guilty as assist the judge and jury to render the most complete justice. Moderation and impartiality should always characterize his conduct before the court. He will in fact have honestly fulfilled his duty

and will be beyond reproach, if, putting aside any appeal to emotions, in a dignified manner consistent with his role, he exposes the evidence to the jury without going beyond what it actually reveals" *

On March 31, 2005, there were 82 Crown attorneys employed by the Public Prosecution Service. They were assisted in their duties by 60 support staff.

* *Boucher v. Her Majesty the Queen [1955] S.C.R. 16*

ORGANIZATION DESCRIPTION

The head office of the Service comprises its senior management, including the Director of Public Prosecutions, the Deputy Director, the Chief Crown Attorney (Appeals), the Chief Crown Attorney (Special Prosecutions), the Director of Communications, the Director of Business Affairs, and their support staff.

The Deputy Director assists the Director and is primarily responsible for the legal operations of the Service. All Chief Crown Attorneys report through the Deputy Director to the Director and are resident in the Western, Cape Breton, Halifax, and Central regions. In the Halifax Region, two Regional Crown Attorneys (Administrative) supervise the activities of Crown attorneys together with their support staff. The regional offices respond to requests from the police for pre-charge legal advice and conduct preliminary inquiries and trials before the various trial courts of the province. Chief Crown Attorneys also head Appeals and Special Prosecutions.

Special Prosecutions Section

This section focuses on commercial crime, cybercrime, fraud, extraordinary, unusual or historical sexual assaults, charges under the province's Revenue Act or other provincial statutes, and Aboriginal law. Members of this unit also prosecute cases that present conflicts for regional offices, or may be involved if a law enforcement officer is the subject of a police investigation or a prosecution.

Appeals Branch

This branch is responsible for conducting all criminal and quasi-criminal appeals to which the Attorney General is a party in the Nova Scotia Court of Appeal and the Supreme Court of Canada. The Appeals Branch also conducts all proceedings required before an appeal is heard by the court. These proceedings include Chambers motions in the Court of Appeal and applications for leave to appeal in the Supreme Court of Canada.

Freedom of Information and Protection of Privacy Act

The service's coordinator for the Freedom of Information and Protection of Privacy Act is also located in the head office. For the period April 1, 2004, to March 31, 2005, the Service received 20 applications for records under this act.

The organizational structure of the Public Prosecution Service is illustrated by the chart on page 19.

ORGANIZATIONAL STRUCTURE

Director of Public Prosecutions
Director of Business Affairs
Director of Communications
Deputy Director of Public Prosecutions
Chief Crown Attorney Halifax Region and Special Prosecutions
Chief Crown Attorney Western Region
Chief Crown Attorney Central Region
Chief Crown Attorney Cape Breton Region
Chief Crown Attorney Appeals Branch
Regional Crown Attorney (Administrative) Halifax
Regional Crown Attorney (Administrative) Dartmouth
Crown Attorneys Support Staff
Crown Attorneys Support Staff
Special Prosecutions Crown Attorneys Support Staff
Crown Attorneys Support Staff
Crown Attorneys Support Staff
Crown Attorneys Support Staff
Crown Attorneys Support Staff

Outcome Measures

OUTCOME	INDICATOR	MEASURE	BASE YEAR MEASURE	TARGET 2005–06	STRATEGIES	RESULTS
High quality trial work	Majority of Crown attorneys attain competent or higher designation	Performance evaluation of Crown attorneys	100%	Maintain majority attainment	• in-court monitoring • develop tool to assist in court monitoring • provide continuing education to all Crowns and support staff • implement a file management information system	Largely achieved
High quality appeal work	Majority of Crown attorneys attain competent or higher designation	Performance evaluation of Crown attorneys	100%	Maintain majority attainment	• in-court monitoring • develop tool to assist in court monitoring • provide continuing education to all Crowns and support staff • implement a file management information system	Largely achieved
Provide high quality legal advice and assistance	Consistent high quality	Supervisory assessment of legal advice (to be developed)	(to be determined)	Maintain consistent high quality	• develop method to record advice and assistance	Strategies in progress
Provide Crown representation in the development of criminal law and criminal prosecutions policy	Provide representation on committees as requested	Number of Crowns who participate	50 Crown attorneys	Maintain representation	• contribute to the development of the criminal law policies and procedures in conjunction with federal and provincial Departments of Justice and liaise with law enforcement agencies, government, the judiciary, and professional associations on policy and procedural matters	Achieved

APPENDICES

APPENDIX A
CRIMINAL CODE CHARGES IN PROVINCIAL COURT BY OFFENCE CATEGORY AND JUDICIAL CENTRE 2004–05

	Halifax	Dartmouth	Amherst	Kentville	Bridgewater	New Glasgow
Homicide & Related	6	4	0	0	0	0
Attempted Murder	6	9	1	4	0	4
Robbery	209	57	3	17	9	4
Sexual Assault	44	40	9	28	25	10
Sexual Abuse	17	21	7	13	15	3
Kidnaping	38	24	11	8	9	4
Abduction	2	0	0	0	0	0
Break & Enter	265	135	59	128	85	55
Weapons	398	237	29	85	45	20
Fraud	6,912	120	55	147	204	60
Major Assault	465	307	43	85	69	67
Simple Assault	886	652	162	249	179	156
Theft	1,087	505	120	271	109	130
Stolen Property	984	466	54	152	84	29
Arson	5	3	2	0	3	0
PD - Mischief	346	203	87	102	77	76
Morals - Sex	119	30	3	8	4	2
Morals - Gambling	0	0	0	0	1	0
Public Order	33	20	23	34	17	13
CC Traffic	144	101	19	58	42	26
Admin Justice	2,568	1,464	414	712	373	493
Impaired Driving	564	595	163	291	257	258
Other CC	762	486	103	176	114	156
Unknown	5	0	0	0	0	1
Totals	**15,865**	**5,479**	**1,367**	**2,568**	**1,721**	**1,567**

APPENDIX A *(continued)*
CRIMINAL CODE CHARGES IN PROVINCIAL COURT BY OFFENCE CATEGORY AND JUDICIAL CENTRE 2004–05

	Truro	Antigonish	Yarmouth	Digby	Sydney	Port Hawkesbury	Provincial Totals
Homicide & Related	1	0	3	0	2	2	18
Attempted Murder	4	0	2	0	4	0	34
Robbery	20	1	11	4	20	1	356
Sexual Assault	24	4	6	11	41	16	258
Sexual Abuse	19	0	8	6	17	4	129
Kidnaping	11	1	6	3	17	0	132
Abduction	0	0	0	0	0	0	2
Break & Enter	108	19	91	40	189	68	1,242
Weapons	90	12	57	85	139	33	1,230
Fraud	101	48	42	30	128	32	7,879
Major Assault	85	25	72	24	218	53	1,513
Simple Assault	257	67	163	166	616	138	3,691
Theft	247	53	115	47	401	62	3,147
Stolen Property	226	26	64	24	162	13	2,286
Arson	4	0	3	0	4	1	25
PD - Mischief	121	36	71	60	258	62	1,499
Morals - Sex	1	0	5	2	10	6	190
Morals - Gambling	0	0	0	0	0	0	1
Public Order	27	3	62	11	30	48	321
CC Traffic	45	36	45	28	58	19	621
Admin Justice	789	241	628	306	2,161	326	10,475
Impaired Driving	308	176	235	170	403	203	3,623
Other CC	170	39	158	89	692	87	3,032
Unknown	0	0	0	0	0	1	7
Total	**2,659**	**787**	**1,847**	**1,106**	**5,570**	**1,175**	**41,711**

APPENDIX B
PROVINCIAL STATUTE CASES
BY JUDICIAL CENTRE 2004–05

	Motor Vehicle Act	Liquor Control Act	Other Provincial Statutes	Total
Halifax	841	86	162	1,089
Dartmouth	283	5	59	347
Amherst	132	55	63	250
Kentville	427	91	114	632
Bridgewater	318	40	47	405
New Glasgow	185	58	41*	284
Sydney	271	49	64	384
Truro	225	20	42	287
Antigonish	115	38	36	189
Port Hawkesbury	93	16	28	137
Yarmouth	167	45	121	333
Digby	172	28	28	228
Total	**3,229**	**531**	**805**	**4,565**

APPENDIX C
APPEALS BRANCH STATISTICS

The following are statistics related to the operations of the Appeals Branch covering the period April 1, 2004, to March 31, 2005.

The Branch participated in 47 appeals heard by the Court of Appeal.

Of this number,

- 10 were initiated by the Crown
- 37 were initiated by the offender
- 1 involved a young offender

Of the 10 appeals initiated by the Crown,

- 4 dealt with acquittals
- 4 dealt with sentence
- 2 dealt with the refusal of DNA orders

Of the 37 appeals initiated by offenders,

- 18 dealt with conviction only
- 6 dealt with sentence only
- 12 dealt with conviction and sentence
- 1 dealt with a DNA order

The Appeals Branch also participated in 11 appeals which were abandoned, quashed, or dismissed without a full hearing in the Court of Appeal.

Of these,

- 3 were initiated by the Crown
- 11 were initiated by offenders

The Appeals Branch also participated in 112 Chambers motions—applications heard by a single judge of the Court of Appeal. Chambers motions include applications for hearing dates, adjournments, bail pending appeal, extensions of time for appeal, directions in appeals, and striking appeals from the Court's docket. The Appeals Branch dealt with nine notices of application for leave to appeal to the Supreme Court of Canada—three initiated by the Crown and six by offenders. The Appeals Branch filed one notice of intervention in a Supreme Court of Canada appeal. Decisions were received from the Supreme Court in six leave applications, two initiated by the Crown and four by the defence.

Counsel in the Appeals Branch continued to be involved in *R. v. Marshall and Julian et al* (the native logging case). The accused, all aboriginals in Nova Scotia, were convicted at trial in Provincial Court on charges of illegally cutting timber on Crown lands. The defendants had claimed aboriginal title to the land and treaty rights to cut and collect timber. A summary conviction appeal to a judge of the Supreme Court of Nova Scotia was dismissed in 2002 and a further appeal to the Nova Scotia Court of Appeal was argued in March, 2003. In the autumn of 2003, the Court of Appeal handed down its decision in which the Court allowed the appeal by the defendants and ordered a new trial. The Crown was granted leave to appeal by the Supreme Court of Canada. Arguments were heard in January, 2005.

Counsel in the Appeals Branch were also involved in three major cases pending in the Court of Appeal including two murders *(R. v. Assoun and R. v. Smith and James)* and one fraud *(R. v. Black)*.

APPENDIX D
BUDGET RESOURCES

Core Business Areas	Budget 2004–05 (000s)	Actual 2004–05 (000s)
Represent the Crown in the conduct of criminal and quasi-criminal matters before all levels of court.	$13,580.1	$13,184.4
Represent the Crown in the conduct of criminal appeals before all levels of courts.	919.9	849.5
Provide legal advice and assistance to the police and provincial law enforcement officers at their request.	Included	Included
Participate in the development of criminal law and criminal prosecutions policy.	Included	Included
Total	**$14,500.0**	**$14,033.9**
Salaries and Benefits	$11,354.3	$10,621.2
Funded Staff (FTEs)	145.0	142.6

APPENDIX E
PUBLIC PROSECUTIONS ACT

AN ACT TO PROVIDE FOR AN INDEPENDENT DIRECTOR OF PUBLIC PROSECUTIONS

Short Title

1 This Act may be cited as the Public Prosecutions Act.

Purpose of Act

2 The purpose of this Act is to ensure fair and equal treatment in the prosecution of offences by

(a) establishing the position of Director of Public Prosecutions;

(b) providing for a public prosecution service; and

(c) providing for the independence of the Director of Public Prosecutions and the public prosecution service.

Interpretation

3 In this Act, "prosecution" includes the decision whether to prosecute or not, the prosecution proceeding itself and matters arising therefrom, and appeals.

4 There shall be a Director of Public Prosecutions who

(a) is the head of the public prosecution service and is responsible for all prosecutions within the jurisdiction of the Attorney General conducted on behalf of the Crown;

(b) may conduct all prosecutions independently of the Attorney General except that the Director of Public Prosecutions shall comply with all instructions or guidelines issued by the Attorney General in writing and published pursuant to this Act;

(c) is, for the purpose of the Criminal Code (Canada) and the Summary Proceedings Act, the Attorney General's lawful deputy in respect of prosecutions;

(d) shall advise police officers in respect of prosecutions generally or in respect of a particular investigation that may lead to a prosecution when the police request such assistance;

(e) may issue general instructions or guidelines to a chief Crown attorney, a regional Crown attorney or a Crown attorney in respect of all prosecutions or a class of prosecutions, and shall cause such instructions or guidelines to be published;

(f) may issue instructions or guidelines to a chief Crown attorney, a regional Crown attorney or a Crown attorney in a particular prosecution.

Qualifications and appointment

5 (1) The Director of Public Prosecutions

(a) shall be a barrister of at least ten years standing at the Bar of Nova Scotia or of another province of Canada, and if of another province, shall, within one year of appointment, become a practising member of the Bar of Nova Scotia;

(b) shall be appointed by the Governor in Council after consultation with the Chief Justice of Nova Scotia, the Chief Justice of the Trial Division of the Supreme Court and the Executive of the Nova Scotia Barristers' Society;

(c) holds office during good behaviour;

(d) has the status of deputy head and the provisions of the Civil Service Act and regulations relating to a deputy or a deputy head apply to the Director of Public Prosecutions; and

(e) shall be paid the same salary as the Chief Judge of the provincial court.

Removal from office

(2) The Director of Public Prosecutions may be removed from office for cause by a resolution of the Assembly.

Acting Director of Public Prosecutions

(3) Where, while the Assembly is not sitting, the Director of Public Prosecutions fails to be of good behaviour, or is unable to perform the duties of office, the Governor in Council may appoint a person to be Acting Director of Public Prosecutions who shall take over the duties of the Director of Public Prosecutions until the Governor in Council sooner rescinds the appointment of the Acting Director of Public Prosecutions. *As amended by 1999 (2nd session), c.16, s.1(1).*

(4) Where a vacancy occurs in the office of the Director of Public Prosecutions in a manner other than that referred to in subsection (2), the Governor in Council may appoint a person to be Acting Director of Public Prosecutions until a Director of Public Prosecutions is appointed pursuant to this Act. *As amended by 1999 (2nd session) c.16, s.1(2).*

Power and duties of Attorney General

6 The Attorney General is the minister responsible for the prosecution service and is accountable to the Assembly for all prosecutions to which this Act applies and

(a) after consultation with the Director of Public Prosecutions, may issue general instructions or guidelines in respect of all prosecutions, or a class of prosecutions, to the prosecution service and shall cause all such instructions or guidelines to be in writing and to be published at the direction of the Director of Public Prosecutions as soon as practicable in the Royal Gazette;

(b) after consultation with the Director of Public Prosecutions, may issue instructions or guidelines in a particular prosecution, and shall cause such instructions or guidelines to be in writing and to be published at the direction of the Director of Public Prosecutions as soon as practicable in the Royal Gazette except where, in the opinion of the Director of Public Prosecutions, publication would not be in the best interests of the administration of justice, in which case the Director of Public Prosecutions, instead, shall publish as much information concerning the instructions or guidelines as the Director of Public Prosecutions considers appropriate in the next annual report of the Director of Public Prosecutions to the Assembly;

(c) may consult with the Director of Public Prosecutions and may provide advice to the Director of Public Prosecutions and, subject to clauses (a) and (b), the Director of Public Prosecutions is not bound by such advice;

(d) may consult with members of the Executive Council regarding general prosecution policy but not regarding a particular prosecution;

(e) may exercise statutory functions with respect to prosecutions, including consenting to a prosecution, preferring an indictment or authorizing a stay of proceedings, after consultation with the Director of Public Prosecutions and shall cause notice of such action to be published at the direction of the Director of Public Prosecutions as soon as practicable in the Royal Gazette. *As amended by 1999 (2nd session) c.16, s.2.*

6A The Attorney General and the Director of Public Prosecutions shall meet at least twelve times a year, on a monthly basis if possible, to discuss policy matters, including existing and contemplated major prosecutions. *As amended by 1999 (2nd session) c.16, s.3.*

6B (1) In this Section, "extraordinary prosecution" means an unexpected or unforeseen prosecution that cannot be undertaken within the budget appropriated for the public prosecution service but is of such a magnitude and importance that, in the opinion of the Director of Public Prosecutions, the prosecution should be undertaken notwithstanding the lack of financial resources.

(2) The Director of Public Prosecutions may spend in any fiscal year an amount that is not more than five per cent more than the amount appropriated for the public prosecution service for that year for the purpose of undertaking an extraordinary prosecution.

(3) The Governor in Council shall provide the additional funds referred to in subsection (2) through a supplementary appropriation.

(4) Where the Governor in Council has provided the funds referred to in subsection (3) and deems it advisable to conduct a review of the need for the additional funds, the Governor in Council may appoint a qualified person to conduct the review. *As amended by 1999 (2nd session) c.16, s.3.*

Deputy Director of Public Prosecutions

7 The Director of Public Prosecutions may, from time to time, designate a barrister in the public service to be Deputy Director of Public Prosecutions who is responsible to the Director of Public Prosecutions and who may exercise all of the powers and authority of the Director of Public Prosecutions and, for that purpose, is a lawful deputy of the Attorney General.

Crown attorneys

8 There shall be Crown attorneys to conduct prosecutions and the Crown attorneys are responsible to the Director of Public Prosecutions and, where applicable, to a chief Crown attorney or a regional Crown attorney.

Regional Crown attorneys

9 There may be a regional Crown attorney to supervise Crown attorneys within a geographic area determined by the Director of Public Prosecutions, and a regional Crown attorney is responsible to the Director of Public Prosecutions.

Chief Crown attorneys

10 There may be a chief Crown attorney to supervise Crown attorneys and, where applicable, regional Crown attorneys, and a chief Crown attorney is responsible to the Director of Public Prosecutions.

Powers, authorities and duties

11 A chief Crown attorney, a regional Crown attorney and a Crown attorney have all the powers, authorities and duties provided by the criminal law of Canada for prosecutors, for prosecuting officers or for counsel acting on behalf of the Attorney General.

Qualifications

12 All chief Crown attorneys, all regional Crown attorneys and all full-time Crown attorneys shall be barristers appointed pursuant to the Civil Service Act upon the recommendation of the Director of Public Prosecutions after a competition.

Annual report

13 The Director of Public Prosecutions shall report annually to the Assembly in respect of prosecutions.

Appointment of barrister

14 (1) The Director of Public Prosecutions may appoint a barrister to take charge of and conduct a particular prosecution or to take charge of and conduct criminal business to the extent specified in the terms of the appointment.

Powers and authority of barrister

(2) A barrister appointed pursuant to this Section shall be known and designated as a Crown attorney and, when acting within the terms of the appointment, has all the powers and authority of a Crown attorney.

Terms of appointment

(3) The Director of Public Prosecutions may, from time to time, vary the terms of appointment of a Crown attorney pursuant to this Section or may, at any time, revoke the appointment.

Existing prosecuting officers

15 Notwithstanding Section 12, all prosecuting officers and assistant prosecuting officers employed by the Province immediately before the coming into force of this Act are Crown attorneys for the purpose of this Act.

House of Assembly Act amended

16 Clause (c) of subsection (1) of Section 30 of Chapter 210 of the Revised Statutes, 1989, the House of Assembly Act, is amended by striking out the punctuation and words "prosecuting officer" in the second and third lines thereof.

Repeal of Prosecuting Officers Act

17 Chapter 362 of the Revised Statutes, 1989, the Prosecuting Officers Act, is repealed.

Proclamation

18 This Act comes into force on and not before such day as the Governor in Council order and declares by proclamation.

Proclaimed - July 24, 1990
In force - September 1, 1990
Amended by Chapter 16, 1999 (Second Session)
which received Royal Assent on November 23, 1999